

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY  
Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600**

**APPEAL OF WEST MONTGOMERY  
COUNTY CITIZENS ASSOCIATION**

**Case No. A-5612**

OPINION OF THE BOARD

(Hearing held September 5, 2001, April 10, 2002)

(Effective date of Opinion: November 14, 2002)

Case No. A-5612 is an administrative appeal in which the appellant charges administrative error on the part of the Department of Permitting Services (DPS) in its March 9, 2001 determination that a an entrance sign located in front of a subdivision was permitted under the Montgomery County Sign Ordinance.

Vincent Renzi, Esquire represented the appellants, West Montgomery County Citizens Association (the Association), and Malcolm Spicer, Esquire represented Montgomery County, Maryland.

Decision of the Board: Administrative appeal **granted**.

**EVIDENCE PRESENTED**

1. In February 1999, DPS issued a sign permit for a subdivision entrance sign in Potomac, Maryland, where a subdivision known as "Glen Meadows" was under development. The original sign copy read "Glen Meadows Coming Soon".

2. After the subdivision was completed, the entrance sign was modified by the property owner to advertise another development at an off-site location.

3. On or about February 17, 2000, the Association complained to DPS that the new sign violated Section 59-F-4.2(a)(3) of the Sign Ordinance, claiming that Section 59-F-4.2(a)(3) restricted signage to language identifying the location of the subdivision, thereby prohibiting any language which constituted "advertising".

4. In a letter dated March 9, 2001, DPS determined that the new sign was permissible because (a) it identified the subdivision where it was placed as well as another subdivision; and (b) the Sign Ordinance was "content neutral", i.e., a law which does not regulate the content of speech.

5. The Association challenged the DPS determination in an appeal filed April 6, 2001 and the Board heard evidence and argument during a two day public hearing.

6. The permit holder removed the sign after the appeal was filed, but prior to the public hearing.

7. The County initially moved to dismiss the appeal, contending that because the sign had been removed, the appeal was moot. At the close of the proceedings, the County argued in the alternative that if the appeal were not dismissed, it should be granted based upon application of Section 59-F-7.1(i) of the Sign Ordinance, which prohibits sign text relating to off-site locations.

8. Appellants have contended throughout these proceedings that the appeal should be granted based upon their interpretation of the Sign Ordinance which prohibits advertising at subdivision entrance signs.

## **FINDINGS OF THE BOARD**

1. Section 59-F-10.3(a)(3) of the Sign Ordinance provides that the Board may hear an appeal of any "final action of the Director related to permits. . . within 30 days of the action". The DPS letter of March 9, 2001 constitutes a "final action" relating to the sign permit which is appealable to this Board.

2. The appeal is not moot because the sign was removed prior to the public hearing and there was "no existing violation" at the time of the hearing. DPS could have taken enforcement action for a past violation even though the sign had been removed. Under the County Code, it could have sought fines, or even an injunction, against the permit holder, See, Sections 1-18, 1-19 and 1-20, County Code. Therefore, the removal of the sign did not necessarily dispose of the legal question or render the appeal moot.

3. Appellant argues that Section 59-F-4.2(a)(3) limits the content of entrance signs to text identifying the location of a subdivision. Section 59-F-4.2(a)(3) provides in pertinent part that an entrance sign is "to identify the location of the subdivision or building". Appellant reads this provision as restricting the contents of an entrance sign so as to prohibit information other than the location of the subdivision. The Board agrees with the Appellant. The section language suggests that identifying the subdivision location is the primary purpose of an entrance sign. The purpose of the Sign Ordinance is to regulate size, location, height and construction, not content. See, *Section 59-F-1.1*.

Division 59-F-7 of the Ordinance specifically lists those signs which are prohibited by the Ordinance; i.e., obscene signs, roof signs, obstructive signs, unsafe signs, signs moved by the wind, signs in the public right-of-way, signs attached to the property of others, abandoned signs, and off-site signs.

4. The appeal should be granted based upon the application of Section 59-F-7.1(i) of the Sign Ordinance which prohibits sign text relating to off-site locations. This section provides that “a sign must not be used to identify a site other than the site where the sign is erected.” In other words, the Sign Ordinance prohibits “off-site” signs. The sign in question identified a site other than the Glen Meadows subdivision where it was located. Therefore, the permit holder violated the Sign Ordinance when it erected the second sign and DPS erred in failing to determine that this violation had occurred.

Granting the appeal is consistent with a recent ruling of the Maryland Court of Special Appeals. *Eller Media Company v. Montgomery County*, 143 App. 562 (2002), involved a takings claim relating to billboards in Montgomery County. In its discussion, the Court referred to the County’s 1997 Sign Ordinance, in particular Section 59-F-7.1(i) relating to “off-site” signs. The Court observed, “If a McDonald’s restaurant had on its premises a billboard identifying the site as McDonald’s, that sign would be permitted as an on-premise sign; if a site had a sign that read ‘McDonald’s one mile,’ it would not be permitted”. *Id.*, at 567, f.n. 3.

On a motion by Allison Ishihara Fultz, seconded by Donna L. Barron, with Louise L. Mayer, Angelo M. Caputo and Donald H. Spence, Jr., Chairman in agreement:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of

Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 14<sup>th</sup> day of November, 2002.

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Katherine Freeman  
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within ten (10) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 2-A-10(f) of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

